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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Elizabeth M. et al., Persons Coming Under the Juvenile Court Law.	
SOLANO COUNTY HEALTH AND SOCIAL SERVICES DEPARTMENT, Plaintiff and Respondent, v. LINDA R., Defendant and Appellant.	A132728 (Solano County Super. Ct. Nos. J38146, J40753)

Minors Elizabeth M. and K.R. were adjudged dependents of the juvenile court, under Welfare and Institutions Code section 300, subdivisions (b) and (j),[1] and removed from the custody of their mother, Linda R. Mother argues that the allegations of the dependency petition failed to state a cause of action and that substantial evidence does not support the court's jurisdictional and dispositional findings. We conclude that mother has forfeited her challenge to the sufficiency of the pleading and that substantial evidence supports the juvenile court's findings. We affirm the juvenile court's orders.

[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

I. FACTUAL AND PROCEDURAL BACKGROUND

Mother has three children: M.R., Elizabeth M., and K.R. (born in 1996, 2005, and 2009, respectively). M.R.'s father is Dwight W. N.M. is Elizabeth M.'s alleged father.[2] K.R.'s father is unknown. The current dependency matter involves only Elizabeth M. and K.R. Prior proceedings involved M.R. and Elizabeth M. Mother failed to reunify with M.R.

2011 Dependency Petition

On April 8, 2011, the Solano County Health and Social Services Department (the Department) filed a section 300 petition on behalf of Elizabeth M. and K.R. The petition alleged failure to protect the children (§ 300, subd. (b)), as follows: "b-1) The mother . . . has a history of mental illness which periodically renders her incapable of providing adequate care, support, and supervision of the children, . . . as evidenced by the children's medical needs not being met, the mother being observed on multiple occasions to be verbally combative and/or hit the child [Elizabeth M.] to the point where the child physically flinches when describing her mother's behaviors to others, chronic homelessness, lack of supervision of the children, the child [Elizabeth M.] missing significant amounts of school, and both children repeatedly appearing dirty and wearing clothing inappropriate for the weather. Despite receiving multiple services to address the mother's issues, including two prior [j]uvenile [d]ependency cases, the mother continues to be unstable. The mother's mental health condition places the children at substantial risk of harm. [¶] b-2) On or about April 6, 2011, [mother] was arrested and subsequently incarcerated for resisting arrest and child endangerment as the mother was not cooperating with safety planning for the care of her children . . . . The mother's actions place the child at substantial risk of harm. [¶] b-3) The alleged father of [Elizabeth M., N.M.,] has a history of domestic violence with [mother] that impairs his ability to provide safe and adequate care for the child. [N.M.] has not provided regular care and support for

[2] N.M. is not a party to this appeal. Thus, we mention him only when relevant to the issues raised in mother's appeal.

the child, placing the child at substantial risk of harm. The petition also alleged abuse of sibling (§ 300, subd. (j)), in that M.R. had previously been declared a dependent and mother had failed to reunify.

Detention Report

The detention report noted that, on April 6, 2011, social worker Sarah Sears met with mother, Elizabeth M., and K.R. as part of her investigation on a referral of general neglect and emotional abuse. The family had been asked to leave Mission Solano, a shelter where they had been living, due to mother's emotional instability, her inappropriate language, discipline, and supervision of Elizabeth M. and K.R. During the visit, Sears found mother to be irrational, hostile, combative, and uncooperative. Mother refused to allow the social worker to interview six-year-old Elizabeth M.

Sears observed that when 16-month-old K.R. began to cry, mother stood up without setting K.R. down or holding on to her. K.R. fell to the floor, landing on her side and buttocks. Sears also observed that while mother subsequently breast fed K.R., she made no effort to soothe or calm the child. Mother eventually threw Sears's business card at her and left the room, shouting obscenities, and flailing her arms. Mother left Elizabeth M. behind. Sears determined that the children were in imminent danger and requested law enforcement assistance. With the assistance of the police officer, safety plan options were discussed with mother. At mother's suggestion, her sister, who is M.R.'s legal guardian, came to the scene. Mother's sister agreed to take the children, but not mother, into her home.

Mother then began to shout vulgarities at the police officer who was present. The officer called for back-up. With the assistance of three additional officers, further attempts were made to negotiate a safety plan while mother's emotional reaction continued to escalate. Mother refused to surrender K.R., began to scream repeatedly, and grasped K.R. with increasing force. K.R. screamed and cried. The officers removed K.R. and placed mother under arrest. Mother resisted arrest, continued to scream vulgarities, and ultimately kicked out the window of the police car. The police officers "hog tie[d]" mother, and the children were taken into protective custody.

The detention report also detailed mother's prior involvement with the dependency system. M.R. was removed from mother's custody in 2003, due to mother's substance abuse, domestic violence, and criminal history that impeded her ability to care for the child. Specifically, mother was arrested, and then convicted and incarcerated, after beating her boyfriend, in front of M.R. Mother was provided 12 months of reunification services, which included parenting education, domestic violence treatment, psychological services, random drug testing, and a substance abuse assessment. Mother failed to reunify with M.R. A legal guardianship was established, and dependency terminated.

On July 15, 2005, Elizabeth M. was also declared a dependent of the juvenile court due to mother's history of substance abuse, domestic violence, and mental health issues. It was alleged that mother and N.M. were involved in a physical fight, in front of Elizabeth M., in which N.M. kicked mother, wrestled her to the floor, and put his hands around her neck. Mother punched N.M. and caused his mouth to bleed. Mother was thereafter offered approximately 18 months of family maintenance services, between June 2005 and January 18, 2007, to address the issues of her mental health, substance abuse and domestic violence. On January 11, 2007, dependency jurisdiction was terminated and Elizabeth M. was returned to mother's care. Elizabeth M. was detained a second time, on December 4, 2007, when mother was again arrested and incarcerated. On January 24, 2008, the dependency petition was dismissed without prejudice and Elizabeth M. was returned to mother's care.

Mother had reported to Sears that she was diagnosed with bipolar disorder and took Prozac. Mother also stated that she had been assessed for schizophrenia but was not sure if there was an official diagnosis. The 2005 dependency petition, filed on behalf of Elizabeth M., stated that mother had been previously diagnosed as suffering from partner relational problem, physical abuse of adult, physical abuse of adult victim, bipolar disorder, delusional disorder, mixed type, histrionic personality disorder with narcissistic personality features, and polysubstance abuse.

Between May 28, 2008, and March 17, 2011, the Department investigated seven referrals regarding mother, Elizabeth M., and K.R. Most recently, it was reported that

16-month-old K.R. was found walking around a parking lot unattended; that mother had verbally and physically abused Elizabeth M., including yanking her by the hair and/or arm and smacking her on the head. The children regularly presented as dirty, unfed, and inappropriately dressed for the weather. Three of the referrals were closed as substantiated. In one such referral, it was reported that Elizabeth M. was enrolled in school but has missed nearly six months and that K.R. was inappropriately dressed for the weather in an "onesie." Another referral indicated that during a period of cold temperatures, mother sent Elizabeth M. to school in shorts, a tank top, and flip flops. When in school, Elizabeth M. appeared dirty, as if she was not bathed. Her hair was dirty and matted and she complained of being hungry. Four more referrals were closed as unfounded because the issues did not rise to the level of abuse.

Upon being taken into custody, six-year-old Elizabeth M. reported that she had " 'diaper rash.' " She complained of pain on urination and a rash on her buttocks and genital area, and was observed itching and scratching those areas. Upon being interviewed, mother reported that Elizabeth M. had a urinary tract infection. Elizabeth had been prescribed antibiotics two months before and, although the problem was ongoing, mother had not taken Elizabeth back to the pediatrician for a follow-up. Mother also acknowledged seeing small raised bumps on K.R.'s arms, legs, abdomen, and back two days prior to the children being taken into protective custody, but mother had not sought medical attention. Mother also acknowledged she had alcoholic drinks five days ago, when K.R. was in her care. Mother described this as " 'a relapse.' "

Sears stated: "The children . . . are described by multiple reporting parties as regularly unsupervised, unkempt, inappropriately dressed, verbally and emotionally, and possibly physically abused." Sears concluded that the children were at substantial risk of serious physical or emotional harm in mother's care. The children were detained by the juvenile court on April 11, 2011.

Jurisdiction Report

The jurisdiction report was filed, on April 25, 2011, by a newly-assigned social worker, Brian Bouknight. The report indicated that Elizabeth M. and K.R. were living in

a foster home. The report also provided that mother had 11 referrals, five of which were substantiated for general neglect, caretaker absence/incapacity and substantial risk.

Elizabeth M. was interviewed and denied ever being hit by, or yelled at by, mother. She also denied wearing inappropriate clothing or missing school. Elizabeth M. reported going to the doctor for a rash and reported that her sister also had a rash. Current immunization records for Elizabeth M. were unavailable, but K.R.'s records showed that she was behind on seven of her immunizations.[3] Elizabeth's school records, from February 17, 2011, through March 25, 2011, showed she had missed 15 of the 29 days of school, of which 14 were unexcused absences.

Documentation from Mission Solano provided that staff had concerns regarding mother's care for her children. Specifically, Mission Solano staff member Frank Ruiz reported that, on March 8, 2011, he asked mother—who was outside smoking a cigarette—to get jackets for the children because her oldest daughter seemed cold. Mother became very upset and told him to mind his own business. This incident was observed by another staff member, Dillard Coleman. Coleman reported that when Ruiz suggested mother put a coat on Elizabeth M., mother told Ruiz to stay out of her business and began to curse at him. When Ruiz asked her to stop cursing or he would write her up, she responded that if he wrote her up she would say that he touched her.[4]

Ruiz also reported that, on March 8, 2011, he observed mother carrying K.R. in a way that seemed to be hurting K.R. He asked to hold the child and told mother that she should not hold K.R. that way. Mother responded by asking for K.R. back and telling Ruiz not to touch her baby and to mind his own business.

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[3] A later report indicates that Elizabeth M. was current on her immunizations.

[4] We cannot agree with mother that all reports from Mission Solano should be discounted because "the staff at Mission Solano may have retaliated against [mother] after she disclosed being sexually assaulted by a staff member . . . ." On an appeal challenging the sufficiency of the evidence, we do not make credibility determinations. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226–1227 [" '[i]ssues of fact and credibility are questions [of fact] for the trial court, not this court' "].)

Mission Solano staff member Tom Harris reported that on March 10, 2011, he found K.R. walking by herself with no one around. K.R. was approximately 75 to 100 feet away from the guest smoking area, all the way across a busy parking lot and street. Harris found mother and asked her to keep her children close and supervised. Harris stated that mother did not seem to understand the gravity of the situation.

Harris also told Bouknight that Mission Solano made four referrals for services due to the mother's behavioral and mental health concerns and that mother had yet to follow through. Harris stated that mother lacks parenting skills, neglects the children, and is verbally abusive. Due to these concerns, mother was asked to leave Mission Solano.

Bouknight found no record of mother being treated for her mental health conditions, but reported that she had an assessment scheduled for April 22, 2011. Mother acknowledged a history of domestic violence and substance abuse. She stated that she last used methamphetamine in 2007 and that, prior to April 6, 2011, she had not consumed alcohol since 2007.

Bouknight concluded: "It is . . . very concerning that this is the fourth dependency petition that has been filed in regards to this family and that the mother has continued to refuse to address her mental health needs. Her unstable mental health prevents her from adequately addressing her children's basic needs and also leads to the physical and verbal violence in regards to [Elizabeth M.] It is recommended that based on this information that the [section 300, subdivisions] (b) & (j) allegations be determined to be true."

On May 18, 2011, an addendum and confidential addendum to the jurisdiction report were filed. The attached letter from Mission Solano indicated that mother was attending a study group called Celebrate Recovery. Mother had a negative urinalysis test on April 19, 2012, and a positive hair strand test for codeine and methamphetamines.

Contested Jurisdiction Hearing

A contested jurisdiction hearing was held on May 19, 2011. The juvenile court indicated it had read and considered the detention report, as well as the jurisdiction report

and addenda. Bouknight was the only witness called. He testified consistently with the reports that he prepared and filed.

Bouknight testified that he met with mother and discussed her mental health history. Mother said she was diagnosed with bipolar disorder and was seeking mental health treatment as well as taking psychotropic medication. But, when Bouknight contacted Solano County Mental Health, they had no records of her being treated prior to mid-April 2011. Mother had also missed two appointments since the children were removed. When Bouknight asked mother about the positive drug test, she explained that a number of months ago, she had smoked a "rolled cigarette" that someone mentioned might have contained methamphetamine. Bouknight was also advised by Mission Solano that mother had a positive test for marijuana.

Bouknight testified that mother had been asked to leave Mission Solano because there were concerns about her parenting skills. He testified that Mission Solano had since allowed mother to return because she was willing to work on her issues. Bouknight did not recommend the return of the children until mother addresses her substance abuse and mental health issues.

On cross-examination by the minors' counsel, Bouknight testified that the instant action was the fourth dependency petition involving mother's children. There was a history in the prior dependencies of mother refusing to address her mental health needs. Mission Solano made four referrals for mental health services that mother failed to pursue. On cross-examination by mother's counsel, Bouknight testified that it was against Mission Solano's policy for mother to leave the children unattended. He acknowledged that, on April 6, 2011, Sears observed that the children's clothing appeared to be dirty, but their hair and skin appeared clean as though they were recently bathed. Bouknight also acknowledged that when law enforcement initially responded to Mission Solano, the officer spoke to mother and initially declined to take the children into protective custody. The police officer indicated that he would allow the mother to leave with the children if she had a safe place to go. Mother suggested the children's maternal aunt, but when the aunt arrived, she was willing to take the children but not

mother. He acknowledged that mother then became emotional, was arrested, and the children were taken into protective custody. Bouknight also acknowledged that mother was very patient and appropriately engaged with the girls during visitation. She had completed a two-hour parenting workshop on handling misbehavior.

On redirect, Bouknight also testified that mother had to be instructed by the visitation supervisor to check K.R.'s diapers herself, rather than asking Elizabeth M. to do so. On recross by minors' counsel, Bouknight testified that Sears was advised by Mission Solano that mother couldn't go to other shelters because they would not tolerate her behaviors. Mission Solano had made multiple attempts to find alternative housing for mother.

The juvenile court found Elizabeth M. and K.R. to be dependent children, under section 300 subdivisions (b) and (j). On the record, the juvenile court stated: "I'm going to sustain allegation (b)(1). I'm going do [*sic*] rewrite it, and I'll do that in a formal order. The allegation as it currently is written focuses on mental health. I agree with [mother's counsel]. There may be a diagnosis. There may be medication for mental health, but I don't think that the history and even the presence of mental health hasn't been connected enough to the welfare of the children whereby, you know, it stands alone as it's own allegation that causes jurisdiction. What I think is the basis of jurisdiction, and I'll write (b)(1) to reflect this, is the failure to supervise at Mission Solano. I don't think it's just a rule, one of many that the [M]ission needs in order to run smoothly. I think it directly reflects on the lack of the ability to provide for the children so they are safe. It's not a rule like make your bed. I think that leaving the children unsupervised in a shelter type house . . . directly impacts on their being unsafe. They provide housing for a lot of people. . . . I think it's incumbent upon a parent to supervise children under those settings in a way that protects them from other residents . . . . [¶] . . . I'm going to find that allegation (J)(1) has been sustained, and I think (b)(2), the way it has been alleged, has been proven. But it doesn't stand alone as a basis for jurisdiction, the fact that she was arrested because she's now been released." The court delayed ruling on allegation b-3 until notice to N.M. was resolved.

On June 20, 2011, jurisdictional findings and orders were filed. The court found: "[The Department] proved that [mother] does have a history of mental illness. However, the court also finds that her mental illness was not a contributing factor to the court's taking jurisdiction. However, it is not the court's intention to preclude [the Department] from requiring [mother] to obtain mental health services as a part of her case plan. [¶] The court finds that [the Department] proved allegation . . . § 300 (b-1) as follows: [¶] [Mother] has a history of not providing adequate care, support and supervision of the children . . . as evidenced by the children's medical needs not being met and failing to supervise the children while residing in a shelter." The court sustained the b-1 allegation, as amended, and the j-1 allegation.

Disposition Report

A disposition report was filed on June 13, 2011. The Department recommended that Elizabeth M. and K.R. continue in out-of-home placement and that reunification services be offered to mother. Mother had reported, to Bouknight, that she received individual therapy, since 2003, through Santa Clara Mental Health and Solano County Mental Health. Since the instant dependency had been initiated, mother had cooperated with the first part of a mental health assessment and a second part was scheduled.

Mother also reported prior problems with alcohol, from 1999 until 2007, marijuana, from 1994 to 1999, and methamphetamine, from 1997 through 2007. She reported completion of drug treatment, in 2005 and 2009, at "Heritage House" in San Jose. However, mother had no proof of completion and Bouknight was unable to locate a program by that name. Mother missed a substance abuse services orientation appointment on May 24, 2011, and on May 31, 2011. The appointment was rescheduled for June 13, 2011. She had tested negative for all drugs on June 2, 2011. Mother was visiting with the children twice weekly. On June 2, 2011, there was concern because mother yelled loudly at the children and caused them both to cry and act out. Mother was asked to leave.

On July 7, 2011, Bouknight filed an addendum to the disposition report. Bouknight reported that mother had left Mission Solano and he had conducted an

assessment of an apartment where mother had been allowed to stay by the renter. Bouknight found one twin mattress in the only bedroom in the apartment and referred her to assistance for obtaining adequate furnishings for her children. On July 5, 2011, the social worker was informed by the renter that mother had left the residence to reside at a homeless shelter.

The addendum report also indicated that mother had recently offered K.R. a piece of chewing gum during therapeutic visitation. The therapeutic visitation supervisor reported that she told mother it was unsafe to provide K.R. (then about 20 months old) with chewing gum. Mother responded by stating, " 'you're not telling me how to parent my child.' " Therapeutic visitation was discontinued. The therapeutic visitation notes for June 6, June 13, and June 20 also reported mother's inappropriate tone of voice and that mother grabbed K.R. by her arm to pull the child onto her lap.

Mother missed three substance abuse assessment appointments and was placed on a 30-day wait list for another appointment. She had, however, completed the second phase of her mental health assessment and was waiting to be assigned a psychiatrist. Mother reported taking Celexa and Prozac. Mother's mental health diagnosis appears to have been amended from bipolar disorder to mood disorder not otherwise specified.

Contested Disposition Hearing

The contested disposition hearing took place on July 11, 2011. Bouknight was again called to testify. Bouknight testified that he found out, on the day of the hearing, that mother recently moved in with a female friend. Mother had moved out of her prior residence because she learned that the landlord was not going to repair damage to the ceiling in the bedroom. Bouknight had spoken to staff at Mission Solano who said that mother could return, but "they would want to see that she's appropriately interacting with the children, taking care of their needs, and also appropriately supervising her children."

Mother had completed the mental health assessment process, but had not yet seen a psychiatrist. Bouknight testified that she was on medication, but that she hadn't started any further treatment. Mother was also referred for substance abuse treatment. However, mother missed three appointments and was placed on a 30-day wait list. Bouknight also

referred mother to therapeutic visitation services for help with her interactions with the children. The services were terminated after mother's negative reaction to being redirected when she attempted to give K.R. gum. According to Bouknight, mother does have positive visits, but when there is a stressor, things get off track. There was a visit in late May where mother yelled at the children to the point where they were crying. Mother had completed one parenting class, but based upon the Department's observations, she had not demonstrated an ability to utilize what she learned in the parenting class.

Upon cross-examination by minors' counsel, Bouknight testified that each of the children showed signs of anxiety in their mother's presence. Upon cross-examination by mother's counsel, Bouknight testified that mother's case manager at Mission Solano reported mother was doing well and participating in the Celebrate Recovery Program. Bouknight also observed a brief portion of a supervised visit on June 23, 2011, and did not note any concerns. Mother was very appropriate with the children and the children appeared to enjoy the visit.

Disposition Ruling

The juvenile court found that K.R. and Elizabeth M. could not be safely returned to mother's care and ordered the provision of reunification services. Mother filed a timely notice of appeal.[5]

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[5] In dependency cases, the dispositional order is generally the first appealable order. (*In re Joann E.* (2002) 104 Cal.App.4th 347, 353–354; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1250.) However, jurisdictional findings and other orders entered before the dispositional hearing are generally reviewable on appeal from the dispositional order. (*In re Joann E.*, at p. 353 ["[i]f there is no specific statutory requirement that a writ be taken before a final, appealable order or judgment is entered, review of intermediate rulings and orders may occur on appeal"]; *In re Athena P.* (2002) 103 Cal.App.4th 617, 624; *In re Megan B.* (1991) 235 Cal.App.3d 942, 950 ["[a] jurisdictional finding, while not appealable, may be reviewed in an appeal from the dispositional order"]; Code Civ. Proc., § 906.)

II. DISCUSSION

Mother argues that the allegations of the dependency petition failed to state a cause of action and that substantial evidence does not support the court's jurisdictional and dispositional findings. We disagree.

A. *Pleading*

First, mother attacks the allegations of the dependency petition. She contends: "[T]he sustained language of count b-1 is deficient on its face to justify the juvenile court's jurisdiction over the minors because it only referenced past events of lack of adequate care and supervision, which were not indicative of a future harm."

Section 332, subdivision (f), requires that a petition to commence proceedings in the juvenile court contain "[a] concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted." "Notice of the specific facts upon which removal of a child from parental custody is predicated is fundamental to due process. [Citations.] Notice of the specific facts upon which the petition is based is necessary to enable the parties to properly meet the charges. . . . [¶] A bare recital of the conclusionary words of the statute does not suffice as notice." (*In re Jeremy C.* (1980) 109 Cal.App.3d 384, 397.)

Here, mother did not raise any objection to the pleading—either at or before the jurisdictional hearing, or after the juvenile court amended allegation b-1, on June 20, 2011. As mother recognizes, there is a conflict among appellate courts as to whether a challenge to the sufficiency of a juvenile dependency petition is forfeited if it is not raised, by demurrer or otherwise, in the juvenile court. (Compare *In re David H.* (2008) 165 Cal.App.4th 1626, 1636–1640 (*David H.*) [holding attack on sufficiency of pleading is forfeited when not raised by demurrer in trial court], *In re S.O.* (2002) 103 Cal.App.4th 453, 459 [same], and *In re Javier G.* (2006) 137 Cal.App.4th 453, 458 [same], with *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397, 399 (*Alysha S.*) ["a pleading is not merely 'a ticket to the courtroom which may be discarded after admission' "].) Under the former

view, "[t]he only exception occurs when a parent claims a petition fails to provide actual notice of the factual allegations." (*In re Javier G.*, at pp. 458–459.)

In *David H.*, we made our position on this split of authority clear. (*In re David H.*, *supra,*165 Cal.App.4th at pp. 1636–1640.) Like mother here, David H.'s mother waited until she appealed from adverse jurisdictional and dispositional orders to argue that the dependency petition was facially insufficient because it failed to allege a current substantial risk of serious physical harm. (*Id.* at pp. 1632–1633, 1636.) We observed: "Although Mother argued at the [jurisdictional and dispositional] hearing that the Agency should have prepared a new jurisdictional report with updated information about the risk of harm to David and that the Agency failed to demonstrate a current risk of harm at the hearing, those arguments addressed the sufficiency of the evidence produced in support of jurisdiction, not the sufficiency of the allegations in the petition. Mother never specifically challenged the sufficiency of those allegations." (*Id.* at p. 1637.)

We recognized that there was a conflict among the Courts of Appeal, but we concluded: "Code of Civil Procedure section 430.80—which provides that challenges to the facial sufficiency of a petition are not forfeited by the party's failure to raise the issue in the trial court—does not apply to juvenile dependency proceedings. [¶] . . . [¶] [Code of Civil Procedure section 430.80] is inconsistent with the purposes of juvenile dependency law. Allowing parties to challenge the facial sufficiency of a petition for the first time on appeal conflicts with the emphasis on expeditious processing of these cases so that children can achieve permanence and stability without unnecessary delay if reunification efforts fail. [Citation.]" (*David H.*, *supra,* 165 Cal.App.4th at pp. 1637, 1639–1640.)

Mother has failed to cite *David H.* in her briefs and has presented no persuasive argument distinguishing its holding.[6] Mother forfeited her pleading argument when she failed to raise it below.

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[6] Mother's claim, that she lacked adequate notice of the amended allegation b-1 is unsupported by the record. The amended allegation b-1 was simply a narrowing of the

B. *Jurisdiction*

Next, mother contends there was insufficient evidence to uphold the juvenile court's finding of jurisdiction under section 300, subdivision (b).

"At the jurisdictional hearing, the court determines whether the minor falls within any of the categories specified in section 300. [Citation.] ' "The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child . . . comes under the juvenile court's jurisdiction." ' [Citation.] On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]" (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) " 'On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' [Citations.]" (*In re Tanis H., supra,* 59 Cal.App.4th at p. 1227.) "The ultimate determination is whether a reasonable trier of fact could have found for the respondent based on the whole record. [Citations.]" (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633, italics omitted.)

Section 300, subdivision (b), provides for jurisdiction when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, *as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child*, or the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide

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original allegation. The original petition did not simply recite the words of section 300, subdivision (b). Rather, it provided notice of the facts upon which amended allegation b-1 was based. (See *In re Jeremy C., supra,*109 Cal.App.3d 384.)

the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse." (Italics added.) Subdivision (b) also provides: "The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

" 'The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the minor, or a "substantial risk" of such harm or illness.' (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) . . . Section 300, 'subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to ["]a substantial risk of serious physical harm or illness." [Citation.]' [Citation.]" (*In re David M.* (2005) 134 Cal.App.4th 822, 829, italics & parallel citation omitted.) Past harmful conduct is relevant to the risk of future harm. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025 (*J.N.*); *In re David M., supra,* 134 Cal.App.4th at p. 831; *In re Rocco M.,* at p. 824.) But, "previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]" (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565; accord, *In re James R.* (2009) 176 Cal.App.4th 129, 135.) "[T]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm . . . [and] '[t]here must be some reason to believe the [abusive] acts may continue in the future.' [Citations.]" (*In re Rocco M., supra,* 1 Cal.App.4th at p. 824.) "Perceptions of risk, rather than actual evidence of risk, do not suffice as substantial evidence. [Citation.]" (*In re James R., supra,* 176 Cal.App.4th at p. 137.)

Mother argues that jurisdiction was improperly based on an isolated instance of past conduct—leaving K.R. unattended at Mission Solano. She relies on *J.N., supra,* 181 Cal.App.4th 1010, to support her argument. In *J.N.,* the father crashed the family car, while driving under the influence of alcohol. Two of the children in the car were

injured; one received nine stitches for a laceration to her head. (*Id.* at pp. 1015–1017, 1023.) The mother was also under the influence and had not insisted that father refrain from driving. (*Id.* at pp. 1016–1017.) On review of the juvenile court's jurisdictional finding, the Sixth District observed: "In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances." (*Id.* at pp. 1025–1026.)

In *J.N.*, the incident was serious, but neither parent had a history of alcohol abuse. (*J.N., supra,* 181 Cal.App.4th at pp. 1017–1018.) The parents also cooperated with the social worker, had no prior referrals, and demonstrated remorse for their behavior. By the time of the jurisdiction hearing, both parents were engaged in parenting and substance abuse programs. (*Id.* at pp. 1015, 1019–1020.) Accordingly, the court of appeal concluded the circumstances did not establish jurisdiction, under section 300, subdivision (b). (*Id.* at p. 1027.)

Mother's citation to *J.N.* is inapt. The record, in this case, contains substantial evidence to support the juvenile court's finding that, at the time of the jurisdictional hearing and as a result of mother's failure to supervise and provide appropriate care, K.R. and Elizabeth M. were at risk of serious physical harm. While juvenile court jurisdiction may not be justified by isolated instances of neglect or abuse (see *J.N., supra,* 181 Cal.App.4th at p. 1025; *In re David M., supra,* 134 Cal.App.4th at p. 831; *Alysha S., supra,* 51 Cal.App.4th at p. 398), we disagree that jurisdiction, in this case, was based on an isolated incident. Mother failed to supervise and provide appropriate care on

numerous occasions. In one instance, K.R., who was less than two years old, was found alone, in a parking lot, across a busy street from Mission Solano. Although K.R. was found outside Mission Solano only once, the detention report also indicated that mother had left Elizabeth M. unattended. It was also reported that, at the time the children were taken into custody, Elizabeth had an unresolved urinary tract infection. K.R., who had not received either a measles/mumps/rubella vaccination or a chicken pox vaccination, had small, raised bumps on her body. Mother had not sought medical attention.

Furthermore, mother has an extensive history of child neglect. Unlike the children involved in *J.N.*, both M.R. and Elizabeth M. had been removed from mother's custody in the past, including after mother was incarcerated and they were left without an appropriate adult caretaker. Although mother appears to have made at least some progress with respect to her domestic violence and substance abuse issues, there is ample evidence of a continuing pattern of failure to provide appropriate care—mother's repeated failure to dress the children appropriately for the weather, mother's resistance to checking K.R.'s diapers, mother's repeated failure to ensure Elizabeth M.'s attendance at school, and mother's failure to keep K.R. up-to-date on her immunizations. Although this latter evidence, standing by itself, does not form the basis of the jurisdictional findings, it nonetheless bolsters the inference that mother does not understand her young children's needs. The juvenile court could reasonably conclude that mother's pattern of neglect put both children at substantial risk of serious physical harm.

And, even if we were to limit our review to the isolated instance in which K.R. was found outside Mission Solano, the *J.N.* factors would support the juvenile court's jurisdictional finding. The incident was a serious one. Although K.R. was not, in fact, injured, K.R. could very well have been hit by a car or abducted. And, when K.R. was found, it was reported that mother did "not seem to understand the gravity of the situation." Thus, unlike the parents in *J.N.*, mother has not provided any assurances that something similar would not happen again. (*J.N.*, *supra,* 181 Cal.App.4th at pp. 1019–1020, 1026.) Substantial evidence supports the juvenile court's finding that mother's "history of not providing adequate care, support and supervision" created a substantial

risk that the Elizabeth and K.R. will suffer serious physical harm or illness. Because there is substantial evidence to support jurisdiction under section 300, subdivision (b), we need not consider section 300, subdivision (j). (*Alysha S., supra,* 51 Cal.App.4th at p. 397 ["the minor is a dependent if the actions of either parent bring [him] within *one* of the statutory definitions of a dependent"].)

C. *Dispositional Order*

Finally, mother contends the evidence was insufficient to justify removal of Elizabeth M. and K.R. "California law requires that there be no lesser alternative before a child may be removed from the home of his or her parent." (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 284, fn. omitted.) "[I]n dependency proceedings the burden of proof is substantially greater at the dispositional phase than it is at the jurisdictional phase if the minor is to be removed from his or her home. [Citations.]" (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 169.) Thus, "[b]efore the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) We review the juvenile court's dispositional findings for substantial evidence. (*Id.* at pp. 915–916.)

Mother argues that the dispositional order must be reversed because the juvenile court failed to make express findings and no clear evidence supports implied findings. Section 361, subdivision (d), provides, in pertinent part: "The court shall state the facts on which the decision to remove the minor is based." Here, the juvenile court expressly found that "[t]here is clear and convincing evidence of the circumstances stated in [section 361, subdivision (c)(1)," but it did not state the facts underlying its conclusion.

Nonetheless, at the jurisdiction hearing and in its amendment to allegation b-1, the juvenile court explained in detail the reasons why mother continued to pose a risk to the children. In these circumstances, we can infer that the same facts underlie the court's finding the children would be at substantial risk of harm if returned to mother. (See *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1825 ["where the trial court has failed to make express findings the appellate court generally implies such findings only where the evidence is clear"].)

In any event, any error in failing to state the facts was harmless. (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218 ["cases involving a court's obligation to make findings . . . have held the failure to do so will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody' "].) Mother argues that an alternative to removal existed in that the children could have been returned to her with supervision by the Department, in the form of family maintenance services, and by mother's case manager at Mission Solano. The record, however, amply demonstrates that such supervision would have been insufficient to protect Elizabeth M. and K.R. Mother had previously resided at Mission Solano and had been unable or unwilling to accept its rules and parenting assistance. Mother had also previously received reunification services, family maintenance services, and agency supervision, but, nonetheless, her children continued to be the subject of referrals for neglect. In the instant dependency proceeding, mother had completed a two-hour parenting class, but has shown at least some resistance to engaging in substance abuse and mental health services. And, mother continued to show disregard for the safety of her young children. At a visit before the disposition hearing, mother offered K.R. chewing gum. Instead of heeding the therapeutic visitation supervisor's advice that the toddler could choke, mother replied, "you're not telling me how to parent my child." Mother's pattern of failure to supervise and care for her children, as well as her unwillingness to respond to parenting instruction and advice, constitute substantial evidence in support of the court's dispositional findings.

III. DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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Bruiniers, J.

We concur:

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Jones, P. J.

_____
Simons, J.